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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC MAIL ROOM

In the Matter of
Revision of Part 22 of the
Commission's Rules Governing
Part 22 of the Public Mobile Services

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Docket 92-115

To: The Commission

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OPPOSITION TO PETITIONS FOR RECONSIDERATION
FILED BY TIA AND McCAW CELLULAR



M. G. Heavener
President

MTC Communications
Box 2171
Gaithersburg, Maryland 20886

January 19, 1994

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MTC Communications which is small minority owned independent Cellular Service Company would like to object to certain suggests changes to Part 22 of the rules as requested by TIA and McCaw Cellular. Both changes deal with modifications or changes of Electronic Serial Numbers. In our December 19, 1994 Petition for Reconsideration, we explained in detailed why bona fide cellular users should be permitted to change the ESN's in phones that they own. These legitimate changes do not involve fraud, are in the public interest and should be permitted by the FCC. We will address each of the issues separately below.

THE TIA REQUEST TO PERMIT ONLY "AUTHORIZED" REPAIRS RULE 22.919

TIA has requested that only "Authorized" Cellular Repair centers or their representatives be permitted to change ESN's. We agree with TIA that they should be able to fully field service their phones which is in the best interest of all parties provided that they do not participate in the theft of cellular service. We have no evidence that this has ever happened.

However, there are thousands of small independent service facilities in the US such as ourselves who will attempt to repair any cellular telephone phone for our regular customers. There are over 50 manufacturers of cellular telephones who have produced an estimated 25 million telephones. It is our assessment that half of the manufacturers have withdrawn from the marketplace and many no long support their telephones. Many never have had an official service program. Many required a return to the factory which was costly and time consuming to everyone but the manufacturer. Someone has to fix these telephones and this is the role of the independent cellular service facility. If the consumers finds out (likely from the independent service shops) that the FCC at the insistence of the carriers and CTIA have past a rule that prevents them from having boards, software, chips, MIN/ESN data, etc. moved from phone to phone in an effort to legitimately repair their phone then there will be a major outcry in the marketplace and it is reasonable that the FCC and carriers should be held responsible for this large economic impact.

We also oppose this proposed rule change limiting only "Authorized" factory representative because it will greatly reduce our repair business. We believe the Commission should instead permit a technician who holds an FCC license to make ESN changes for legitimate customers provided proper identification and other conditions are met as we outlined in our motion for reconsideration. Should the Commission not want to use their technician licensing program then the commission could adopt language that the service facility has to be "Authorized" by a legitimate manufacturer of radio products that is licensed by the FCC. For example, a Motorola facility should be able to work on an NEC product if they have the skill and equipment.

Most of our customers are police departments and other public safety agencies. We could never afford to deal with customers who want "illegal cloned phones" to hide their drug trade or other activities. We believe that many of the thousands of other legitimate independent service firms that deal with the repair of business or public safety radios and telephones are not going to jeopardized their regular repair business by selling cloned phones to people who are going to steal airtime or long distance calls.

We would like to remind the Commission that both TIA and all of the respondents who filed oppositions on December 19, 1994 agreed that the Commission's rule change regarding ESN's will have no effect on fraud since there are 20 to 30 million existing phones that can obviously be modified very easily by those who want to steal airtime. In conclusion, we believe this rule change and TIA's modified request is going to place major inconvenience on those legitimate customers who need their cellular phones fixed and/or reprogrammed and the FCC should not try to regulate an activity that cannot be enforced. We think the existing fraud laws such as U.S. Title 18 are more than adequate to deal with the fraud problems without adding another FCC layer of regulations.

MCCAW CELLULAR COMMUNICATIONS, INC. CLARIFICATION ON
PAGE 42 DEALING WITH TERMINATION OF SERVICE IN PART 22.901
RELATIVE TO USE OF EMULATED PHONES.

We assume that McCaw is using emulation to mean the reprogramming of a phone to permit it be an extension phone. As filed in our petition for reconsideration we strongly believe that an extension cellular telephone should be permitted just as a wireline extension phone has been permitted without charge for about 15 years. Now that AT&T owns McCaw we are truly amazed that they are again trying to prevent extension telephones by bona fide customers. Nice try, McCaw!

We are sure McCaw will try to use some of the same arguments that AT&T used for decades until they were proved to be false. The main issues were that customer owned extension phones would cause billing problems or somehow injury the U.S. telephone system. For years they could disconnect a customer's telephone service should they find a CUSTOMER OWNED TELEPHONE attached to the network. Today, AT&T has stores selling telephones and hundreds of other devices that attach to the telephone system making this whole issue laughable if there were not billions of dollars of wasted consumer money at stake as we pointed out in our previous motion.

We therefore take strong opposition to McCaw's request to deny customer's service should they use an emulated, reprogrammed or extension telephone and request that emulation or any similar word be struck!



M. G. Heavener
President
MTC Communications

CERTIFICATE OF SERVICE

I, M. G. Heavener, President of MTC Communications certify that I have this 20th day of January, 1995 have sent by first-class, U.S. Mail, postage prepaid, a copy of the foregoing PETITION OF OPPOSITION to the following:

Grier C. Raclin
Gardner, Carton & Douglas
1301 K Street, N. W.
Suite 900, East Tower
Washington, D. C. 20005

Cathleen A. Massey
McCaw Cellular Communications, Inc.
Regulatory Counsel
1150 Connecticut Ave., N.W.
4th Floor
Washington, D. C. 20036

A handwritten signature in black ink, appearing to read "M. G. Heavener", written over a horizontal line.

M. G. Heavener